

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Julio Cesar Tapia,

Petitioner,

v.

Charles L. Ryan, et al.,

Respondents.

No. CV-13-00059-TUC-RM

ORDER

Pending before the Court is Petitioner Julio Cesar Tapia's Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2254 (Doc. 1), and a Report and Recommendation (Doc. 13) issued by Magistrate Judge Jacqueline M. Rateau. Judge Rateau recommends denying Petitioner's § 2254 Petition as untimely. Petitioner filed an Objection (Doc. 19) to Judge Rateau's Report and Recommendation.

A district judge must "make a de novo determination of those portions" of a magistrate judge's "report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C); *see also* Rule 8(b) of the Rules Governing 2254 Cases in the United States District Courts. This Court has made a full and independent review of the instant Petition, the Report and Recommendation, and the record. The Court finds that Judge Rateau's Report and Recommendation appropriately recommends denial of the Petition as untimely. Nothing in Petitioner's Objection alters any of the conclusions made by Judge Rateau.

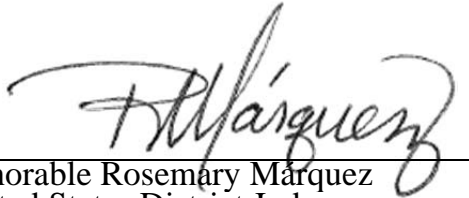
Before Petitioner can appeal this Court's judgment, a certificate of appealability

1 must issue. *See* 28 U.S.C. §2253(c); Fed. R. App. P. 22(b)(1). A certificate may issue
2 “only if the applicant has made a substantial showing of the denial of a constitutional
3 right.” 28 U.S.C. §2253(c)(2). A substantial showing is made if “reasonable jurists
4 could debate whether . . . the petition should have been resolved in a different manner,”
5 or if “the issues presented were adequate to deserve encouragement to proceed further.”
6 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation omitted). Upon review
7 of the record in light of the standards for granting a certificate of appealability, the Court
8 concludes that a certificate shall not issue, as the resolution of the Petition is not
9 debatable among reasonable jurists and does not deserve encouragement to proceed
10 further.

11 Accordingly,

12 **IT IS HEREBY ORDERED:**

- 13 1. Magistrate Judge Rateau’s Report and Recommendation (Doc. 13) is
14 **accepted and adopted**.
- 15 2. Petitioner’s Objection (Doc. 19) is **overruled**.
- 16 3. Petitioner’s Petition for Writ of Habeas Corpus (Doc. 1) is **denied**.
- 17 4. This case is **dismissed with prejudice**. The Clerk of Court is directed to
18 enter judgment accordingly and close this case.
- 19 5. The Court declines to issue a certificate of appealability.
- 20 Dated this 17th day of February, 2016.

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24 Honorable Rosemary Marquez
25 United States District Judge
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